

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JEANNA NORRIS,)	
)	
Plaintiff,)	
)	No. 1:21-cv-756
-v-)	
)	
)	Hon. Paul L. Maloney
SAMUEL L. STANLEY, JR., ET AL.,)	
)	
Defendants.)	
)	

ORDER DENYING MOTION TO STRIKE

This matter is before the Court on Plaintiff's "motion for alternative forms of relief in light of the unauthorized late filing of a second Dr. Zervos declaration" (ECF No. 22). Plaintiff moves to strike Defendants' rebuttal declaration of Dr. Zervos (hereinafter the "Zervos declaration") (see ECF No. 17). Plaintiff filed the present motion on September 21, 2021, which was the day before the Court held a motion hearing on Plaintiff's motion for preliminary injunction. She moved to strike on three grounds: (1) that the filing of the Zervos declaration was improper under the Federal Rules and the Western District of Michigan's Local Rules of Civil Procedure (ECF No. 22-1 at PageID.745); (2) that the Zervos declaration was "unauthorized" because Plaintiff did not agree to the filing (ECF No. 22-1 at PageID.746); and (3) that the Zervos declaration "contained no information that could not have been included in Dr. Zervos's initial Declaration. . ." (ECF No. 22-1 at PageID.746).

The Court finds that all three arguments lack merit. First, there is nothing in the Federal Rules or the Local Rules of Civil Procedure that prohibit a party from filing a rebuttal declaration. Second, there was no need for Plaintiff to consent to the filing of the Zervos

declaration because the declaration was not a sur-reply, it was a rebuttal declaration. And third, there is nothing in the Federal Rules or Local Rules of Civil Procedure that prohibit a party from filing a second declaration when that party could have included the information in the second declaration in the first.

Further, at the hearing on Plaintiff's motion for preliminary injunction (again, which took place after Plaintiff filed this motion to strike and reviewed the Zervos declaration), Plaintiff's counsel cross-examined Dr. Zervos. Plaintiff also submitted a reply-declaration by Dr. Noorchashm (ECF No. 22-3), to which Defendants did not object and the Court will accept as part of the record. If Plaintiff faced any prejudice from the Zervos declaration, it has been remedied.

Accordingly,

IT IS HEREBY ORDERED that Plaintiff's motion to strike (ECF No. 22) is **DENIED**.

IT IS FURTHER ORDERED that Plaintiff's alternative request in her motion to strike—that the Court accept Dr. Noorchashm's reply-declaration—is **GRANTED**.

Date: October 4, 2021

/s/ Paul L. Maloney

Paul L. Maloney

United States District Judge